U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, DC 20410-0001

September 24, 2001

MORTGAGEE LETTER 2001-22

TO: ALL APPROVED MORTGAGEES

ATTENTION: Servicing Managers

Subject: The Effect of the Soldiers' and Sailors' Civil Relief Act of 1940 on FHA-insured Mortgages

This mortgagee letter provides updated guidance to mortgagees on the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (hereafter the 1940 Act) as it affects FHA-insured mortgages. This guidance supersedes Mortgagee Letter 91-6, dated January 30, 1991.

The 1940 Act provides additional relief, but does not amend the National Housing Act. The Department is not in a position to interpret all the various provisions of the 1940 Act as they may affect rights between mortgagees and mortgagors. Such interpretations should be obtained from the Department of Defense, the mortgagee's attorney, or be determined by the courts.

The 1940 Act provides certain relief measures to persons in military service. Section 511 of the 1940 Act defines "person in military service" as all members of the Army, Navy, Marine Corps, Air Force and Coast Guard, as well as Public Health Officers detailed for duty with either the Army or Navy. According to Section 526 of the 1940 Act, all debts incurred by a member of the military service **prior to** entry into active duty shall be charged a maximum interest rate of six percent for the period of active military service. Also, Section 532 provides protections during foreclosure when a person in the military service entered into a contract obligation before that person's entry into the service.

The Department's regulations at 24 CFR 203.345, 203.346, and 203.610 also provide special relief provisions for persons in the military service. These relief measures cover several areas of servicing of affected FHA-insured mortgages, including: postponement of principal payments and protection during foreclosure.

Reduction of Monthly Payments

The 1940 Act requires that lenders charge not more than a six percent interest rate during the period of active military service on all debts incurred by a member of the military service prior to entry into active duty service, unless in the opinion of the court, the ability to pay is not materially affected by reason of such service. This interest rate limitation includes FHA-insured mortgages. According to the 1940 Act, interest is defined to include service charges, fees, or any other charges (except bona fide insurance).

Since the 1940 Act only requires that the interest be reduced to six percent for the period of active duty, lenders may calculate the interest for the first and last months of active duty on a per diem basis, or choose to permit the lower interest rate for the whole month.

If notified that a mortgagor is on active military duty, the lender must advise the mortgagor or representative of the adjusted amount due, provide adjusted coupons or billings, and ensure that the reduced payments are not returned as insufficient.

If the lender was not notified that the mortgagor is on active military duty, but receives a reduced payment which approximates an interest reduction to six percent, the lender is expected to contact the mortgagor or a representative to determine whether the mortgagor is on active military duty. If no appropriate explanation is provided, the lender may return the insufficient payment if in compliance with 24 CFR 203.556.

The few remaining Section 235 mortgages still receiving assistance may be affected by the interest rate reduction. Any income recertification requests received from mortgagors must be processed expeditiously. On all accounts receiving assistance where the note rate of interest exceeds six percent, the assistance must be reanalyzed. Since the 1940 Act reduces the interest rate to six percent for the period of active duty, the subsidy must be calculated using the full mortgage payment at that rate when determining the assistance. For some accounts, the interest rate reduction will cause the suspension of assistance for the term of active military duty. Whenever an interest rate reduction is performed for retroactive effect and the Section 235 assistance is reduced, any over billed subsidy must be returned to the Department by refund or adjustment to the next Section 235 monthly billing. When active duty terminates and the Note rate resumes, the assistance must be recalculated and assistance restored in accordance with the usual procedures.

Protection During Foreclosure

According to Section 532 of the 1940 Act, court permission is necessary to foreclose a loan that falls under its provisions. Foreclosure sales (or manufactured-housing repossessions) during the period of military service or within three months thereafter are invalid unless the courts permit them or they take place pursuant to a written agreement, entered into after the commencement of active duty, between the parties involved, as provided in Section 517 of the 1940 Act. Violations of Section 532 can result in a prison term of up to one year or a fine or both.

Loss Mitigation

Since Mortgagee Letter 91-6 was issued the assignment program has been terminated. However, lenders must consider all applicable loss mitigation options for active duty military persons. These options include special forbearance, loan modification, partial claim, pre-foreclosure sale and deed-in-lieu of foreclosure. For guidance, lenders should refer to Mortgagee Letter 00-05, Loss Mitigation Program-Comprehensive Clarification of Policy and Notice of Procedural Changes.

Postponement of Principal Payments

In addition to the normal loss mitigation options, lenders may, by written agreement with the mortgagor, postpone any part of the mortgage payment that represents principal. Such arrangements must include a provision for resuming monthly payments, once the period of active duty plus three months has ended, in amounts that would completely amortize the mortgage debt within the maturity as provided in the original mortgage.

Claims for Insurance Benefits

On conveyance claims, the Department will pay the applicable debenture interest rate from the date of default to the date the claim is paid unless interest is curtailed pursuant to 24 CFR 203.402 (k). Delays in foreclosure caused by the 1940 Act will not cause a debenture interest curtailment.

Please direct any questions regarding this guidance to the Department's National Servicing Center in Oklahoma City, at (888) 297-8685 (this is a toll-free number).

Mel Martinez